

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CURTIS GENE THORNTON,
Petitioner,
vs.
DAN PACHULKE,
Respondent.

NO. CV-07-280-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DIRECTING
TRANSFER TO NINTH CIRCUIT COURT OF
APPEAL

BEFORE THE COURT is Petitioner's "Motion to Reverse the Recommendation of the U.S. Magistrate Judge . . ." (Ct. Rec. 10), which the court construes as his Objections to the Report and Recommendation to transfer this case to the Ninth Circuit Court of Appeals.

Petitioner argues such a transfer would create an "inordinate" delay and he is entitled to have his habeas action decided promptly. Contrary to Petitioner's assertions, however, a federal district court has no authority to consider his successive habeas petition in the absence of authorization from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3)(A). Accordingly, **IT IS ORDERED** the Report and Recommendation (Ct. Rec. 9) is **ADOPTED in its entirety**.

On February 26, 2001, the Honorable Wm. Fremming Nielsen

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1 dismissed with prejudice Mr. Thornton's prior habeas corpus petition
2 challenging his 1997 Spokane County convictions for First Degree
3 Robbery and First Degree Possession of Stolen Property. See CV-00-
4 5006-WFN. Petitioner's claim of ineffective assistance of trial
5 counsel was decided on the merits after briefing by Petitioner and
6 Respondent. Judge Nielsen determined the state court had not erred in
7 concluding Mr. Thornton received effective assistance of counsel. See
8 CV-00-5006-WFN, Ct. Rec. 13). No appeal of that determination was
9 taken.

10 Pursuant to 28 U.S.C. § 2244, Petitioner was required to file a
11 motion with the Ninth Circuit Court of Appeals for an order
12 authorizing this court to consider this petition. Petitioner makes no
13 assertion and presents no documentation showing he complied with this
14 requirement.

15 When a second or successive petition is mistakenly submitted to
16 the district court, that court shall refer it to the court of appeals.
17 Ninth Circuit Rule 22-3(a). Accordingly, **IT IS ORDERED** this case is
18 **TRANSFERRED** to the Ninth Circuit Court of Appeals, pursuant to 28
19 U.S.C. § 1631 and Ninth Circuit Rule 22-3(a).

20 Petitioner is advised this transfer does not of itself constitute
21 compliance with § 2244(b)(3) and Ninth Circuit Rule 22-3; he must
22 still file an application for leave to proceed in the Court of Appeals
23 and make the showing required by § 2244(b)(2). Petitioner is directed
24 to consult this statute and Ninth Circuit Rule 22-3 for further
25 information.

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28 ORDER ADOPTING REPORT AND RECOMMENDATION AND DIRECTING TRANSFER TO
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1 **IT IS SO ORDERED.** The District Court Executive is directed to
2 transfer all original documents to the Ninth Circuit Court of Appeals.
3 The District Court Executive shall, however, retain a copy of the
4 petition and of this Order in the file. The District Court Executive
5 is further directed to enter this Order, forward a copy to Petitioner,
6 and close the file.

7 **DATED** this 13th day of November 2007.

8 *s/ Robert H. Whaley*

9 Robert H. Whaley
10 Chief United States District Judge

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